



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CANADIAN MENTAL HEALTH ASSOCIATION FOR THE KOOTENAYS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, MT

### Introduction & Evidence

This hearing was convened by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant to cancel a 1 Month Notice to End Tenancy for Cause (the “Notice”) and for more time to cancel the Notice.

An agent for the Landlord (the “Landlord”) appeared for the hearing and provided affirmed testimony during the hearing but no documentary evidence prior to the hearing. The Tenant appeared for the hearing and provided no testimony; however, the Tenant was represented by two Agents who were also involved in the providing the Tenant with mental health services. The Tenant confirmed that the two agents would represent him and make submissions on his behalf. A copy of the Notice was provided in written evidence for this hearing.

The Landlord’s agent confirmed receipt of the Tenant’s Application to dispute the Notice which was served to another agent of the Landlord. The Landlord testified that the documents were not passed onto her until several days before this hearing. As a result, she did not submit any documentary evidence because this would not have been served in accordance with the time lines set out in the Rules of Procedure.

I firstly turned my mind to the Tenant’s Application for more time to cancel the Notice.

The Landlord testified that the Notice dated December 10, 2014 had been posted to the Tenant’s door on the same day it was issued. The Landlord explained that she knew the Tenant would not receive it as the Tenant was in hospital undergoing mental health treatment. However, the Landlord had no other means to serve this to the Tenant that complied with the *Residential Tenancy Act* (the “Act”).

The Landlord testified that she had contacted the Tenant’s mental health worker, who was not part of this hearing, to explain that the Tenant had been served with the Notice by attaching it to this door.

The Tenant's agents testified that they became aware of the Notice on December 15, 2014 and were unable to receive instructions regarding the Notice from the Tenant as he was in hospital. The Tenant's agents explained that the Tenant was under the care of several health workers at the time and there was some confusion about what to do with regards to the Notice and which member of the team was to make the Application to dispute the Notice on the Tenant's behalf. As a result, a mental health worker made the Application on December 24, 2014.

Section 90(c) of the Act provides that a document served by attaching it to the door is deemed to have been received three days later. Therefore, the Tenant would have had until December 23, 2014 to make the Application to dispute the Notice. However, the Application was not made on behalf of the Tenant until a day later.

Section 66(1) of the Act provides that a time limit established by the Act may be extended only in exceptional circumstances.

In my consideration of the Tenant's Application for more time to cancel the Notice, I was satisfied that the Tenant was in hospital at the time the Notice was served and as he was undergoing mental health treatment, he would not have been in a position to dispute the Notice. This decision and determination was left to his mental health team and I accept the oral testimony that changes in his mental health team delayed the making of the Application one day past the deadline. Therefore, I allowed the Tenant's Application to proceed and continued to hear the parties' evidence in relation to the reasons why the Notice was served to the Tenant.

The Landlord testified that the rental accommodation is mainly intended as independent living for Tenants with mental and physical disabilities as well as senior citizens.

The Landlord testified that during two previous incidents, one on June 27, 2014 and one on December 2, 2014, the Tenant left his rental suite in his underwear only, exited the building and attempted to flag down passing vehicles on the busy road adjacent to the residential complex. On both occasions the police were called and the Tenant was taken to hospital for further treatment.

The Landlord explained that she and the residents were concerned about the Tenant and the safety risk he posed to himself and other residents and that his mental illness is beginning to affect and impact the peaceful and quiet enjoyment of other residents. The Landlord submitted that the Tenant needed to be in a place that offered a higher level of care and that the residential complex is not capable of dealing with this escalation in the Tenant's mental illness.

The Tenant's agents did not dispute the Landlord's testimony regarding the two incidents but submitted that the Tenant, despite being on medication for his mental illness, occasionally relapses at which point he is given the appropriate care.

The Tenant's agents submitted that the accommodation provided by the Landlord was the most suited and appropriate place for the Tenant to be in and that if the Tenant were to be evicted, it was likely that he would go to place that was not able to accommodate his condition. The Tenant's agents submitted that the Tenant's partner had just passed away and that this event was taking a further toll on the Tenant's life. The Tenant's agents submitted that the impact of the two events on the tenancy was minimal and that it should not lead to the ending of his tenancy.

When the Landlord was asked about any written notices that had been given to the Tenant prior to the service of the Notice, the Landlord explained that she had not issued any kind of breach letter for these two events as she felt that this may exacerbate the issues and further deteriorate the Tenant's condition. However, the Landlord submitted that she had given written notices to the Tenant regarding the cleanliness of his suite.

After the parties had provided their testimony and submissions, the Landlord indicated that she was willing to withdraw the Notice if she could be assured that the level of care provided to the Tenant would increase which in turn would give her confidence that the Tenant's conditions was being managed more carefully. This would then likely prevent any further relapses. The Tenant's agents were agreeable to these terms.

### Analysis & Conclusion

Pursuant to Section 63 of the Act, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of the dispute. Both parties agreed to settle the Application under the following terms:

1. The parties agreed to the withdrawal of the Notice dated December 10, 2014. As a result, this Notice has no affect and the tenancy will continue until it is ended in accordance with the Act.
2. The Landlord asked that the Tenant's agents provide the Tenant with daily in person contact and that they submit to her a written plan of how the Tenant's condition is going to be better managed. The Tenant's agents agreed that the

Tenant would be visited six days a week and that they would provide the Landlord with a written plan before the Tenant comes back to the rental suite, namely by January 28, 2015.

3. The Landlord will provide the Tenant with a written notice detailing the breaches that have occurred during this tenancy.

If the Landlord is not satisfied that the above agreed terms and conditions have not been met and the disturbances are continuing, the Landlord is at liberty to serve the Tenant with another Notice. If this Notice is disputed by the Tenant, the Landlord is required to provide evidence to support the reasons on the Notice for ending the tenancy, including any written breach letters provided to the Tenant and evidence how the breach has continued.

Although the Tenant did not provide any testimony or evidence during this hearing, the Tenant's agents submitted that the Tenant had listened carefully during this hearing and had agreed to the above terms and conditions. The Tenant thanked the Landlord at the end of the hearing and the parties were satisfied that mutual resolution to continue the tenancy had been reached.

The Tenant is cautioned regarding the provisions of Section 26(1) of the Act in paying rent on time under the tenancy agreement. The Tenant is also cautioned regarding Section 32(2) of the Act which requires a Tenant to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and other residential property he has access to.

This agreement does not change the rights and obligations that both parties have under the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 23, 2015

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Residential Tenancy Branch

